IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6796 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDBHAI BACHUBHAI TADVI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/03/2000

ORAL JUDGEMENT

#. District Magistrate, Baroda, passed an order on

August 16, 1999, in exercise of powers under section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detenue under the provisions of the PASA Act.

#. While passing the order of detention, the detaining authority took into consideration 7 offences registered against the detenue under the Bombay Prohibition Act. The detaining authority also took into consideration statements of three anonymous witnesses and came to conclusion that the detenue is a "bootlegger" and that his activities are detrimental to public order which are required to be immediately prevented . The detaining authority exercised the powers under section 9(2) of the PASA Act, by claiming privilege of not disclosing the identity of the witnesses in the grounds of detention. The detaining authority observed that the witnesses have requested while giving statements to maintain secrecy in respect of their identity. That this request was the outcome of the fear suffered by the witnesses qua the detenue. The detaining authority observed that he is satisfied that the fear is correct and genuine and there is possibility of damage being caused to person and property of the witnesses if the identity is disclosed and therefore, the anonymity be maintained. The authority considered less drastic remedies and was satisfied it is not possible to resort to less drastic remedies and the detention under the PASA Act is the only efficacious remedy that can be resorted to and ultimately, the order was passed.

#. The detenue/petitioner has challenged the order of detention on various grounds. However, Ms. Patel, learned advocate appearing for the petitioner has relied only on the ground of improper exercise of powers under section 9(2) of the PASA Act. She submitted that the statements of witnesses have not been verified by the detaining authority and therefore, the subjective satisfaction recorded by the detaining authority in the grounds of detention is without basis. The verification is done by Dy.S.P. and the detaining authority has accepted the statements without verifying about the genuineness of the fear expressed by witnesses in a mechanical manner. This non-application of mind, according to Ms. Patel, would vitiate the order of detention, as claim of privilege, then, would infringe the right of the detenue of making an effective representation. She therefore, submitted that the petition may be allowed and the impugned order may be quashed.

#. Mr. K.T.Dave, learned AGP has opposed this petition.

#. Considering the material on record in light of the rival side contentions, it transpires that the detaining authority has observed while exercising the powers under section 9(2) of the PASA Act that he is satisfied about the fear of the witnesses being correct and genuine. However, it also appears clearly that the statements have not been verified by the detaining authority himself. The verification of the statements is made by the Dy.S.P. and there is nothing to indicate that this verification by Dy.S.P. was at the behest of or under the instructions of the detaining authority. The detaining authority has accepted the verification of statements made by the Dy.S.P. and has recorded subjective satisfaction which in fact, cannot be considered subjective satisfaction at all. The absence of subjective satisfaction about the correctness and genuineness of the fear expressed by the witnesses will have adverse bearing on the exercise of powers under section 9(2) of the PASA Act by the detaining authority. This would, in turn, affect the right of the detenue of making an effective representation envisaged under Article 22 (5) of the Constitution of India. The detaining authority has not filed any affidavit-in-reply to indicate, how he has recorded his satisfaction.

#. The powers under section 9(2) of the PASA Act are required to be exercised by the detaining authority keeping in mind the fact that the powers are required to be exercised in public interest as against the right of the detenue of making an effective representation. The authority has to weigh two aspects and strike a balance between the two. In the instant case, there is nothing to indicate that the detaining authority undertook the exercise of ascertaining the correctness and genuineness of fear expressed by the witnesses qua the petitioner in their statements. The detaining authority appears to have accepted the statements at their face value and in the absence of such exercise being undertaken by the detaining authority, the verbal subjective satisfaction is of no virtue which can be said to be only an empty performance of formality on the part of the detaining authority. This being so, the detention order would stand vitiated adversely affecting the right of the detenue of making an effective representation. The petition, therefore, deserves to be allowed.

#. In view of the above discussion, this petition is allowed. The impugned order of detention dated August

16, 1999 is hereby quashed and set aside. The detenue Arvindbhai Bachubhai Tadvi, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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